

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the matter of Global NAPs, Inc.)	
)	
)	Docket No. 01-0786
Petition for Arbitration Pursuant to Section)	
252(b) of the Telecommunications Act of 1996)	
to Establish an Interconnection Agreement with)	
Illinois Bell Company d/b/a Ameritech Illinois)	

REPLY BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

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I. INTRODUCTION:

NOW COMES the Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, and, pursuant to Section 761.400 of the Commission’s Rules of Practice, 83 Ill. Adm. Code 761.400, submits its Reply Brief in the instant arbitration proceeding.

Staff has thoroughly addressed most of the points raised in the Ameritech Illinois Brief and GlobalNaps Brief. Ameritech Illinois (“Ameritech Illinois” or “Ameritech”) and GlobalNaps (“GNAPs”) and Staff each submitted on March 1, 2002 initial briefs in this proceeding (such initial briefs are hereinafter referred to as the “Ameritech IB”, “GNAPs IB”, and “Staff IB” respectively). In the interest of brevity, Staff will not reiterate points previously made. Rather, Staff will only comment on several key points raised in the initial briefs. The absence of a response in this reply brief to Ameritech’s and GNAPs’ positions should, however, not be construed to mean that Staff concurs with those positions; rather, it means that Staff believes it has adequately described its position in its initial brief and that no further comment is necessary.

II. REPLY TO ARGUMENTS:

Issue 1- Points of Interconnection (“POI”)

The Ameritech Brief and the GNAPs Brief indicate that both parties agree that, pursuant to the statutory right granted by 47 U.S.C. § 251(2)(c)(B), GNAPs may connect at any technically feasible location in Ameritech’s network. See GNAPs IB at 5-6 and Ameritech IB at 1. Therefore, the language for Appendix NIM, section 1.11, of the Interconnection Agreement should reflect this agreement.

***Issue 2- Costs Associated With Transporting Telecommunications
Traffic To The Single POI.***

Staff maintains that Ameritech and GNAPs should bear their own costs of facilities on their own side of the a single POI. See Staff IB at 4-10. GNAPs agrees with Staff's position. GNAPs IB at 7. Ameritech, on the other hand, asserts that if GNAPs elects to establish a single POI per LATA, GNAPs should be responsible for the incremental costs on Ameritech Illinois' side of the POI that flow from GNAPs' election. Ameritech IB at 2.¹

Staff does not dispute Ameritech's allegation that GNAPs' decision to establish a single POI will raise Ameritech's cost of transporting certain calls. Ameritech IB at 2. Yet, Ameritech's one-sided argument fails to acknowledge that its multiple POI plan will raise the cost of transporting and switching certain calls for GNAPs. See Ameritech IB at 3. Furthermore, Ameritech tries to offer support for its position by identifying a certain type of call, *i.e.* "long haul call", that would cost more to transport with a single POI architecture than with a multiple POI architecture. The "long haul call", however, is a term that was created and defined by Ameritech's own witness. See Ameritech Ex. 3 (Mindell Direct) at 10. Ameritech is attempting to establish a policy for determining the costs for transporting traffic to the single POI by making up definitions for certain call types.²

¹As indicated in the Staff IB, the questions of cost recovery associated with a single POI arrangement, similar to Issue 2 in this proceeding, are being addressed in Docket 01-0614 as a matter of state law. See Staff IB at 4 footnote 1. On March 8, 2002, Administrative law judge Woods issued a proposed order rejecting Ameritech's cost recovery proposal. See ICC Docket 01-0614 Proposed Order at 86-106. (March 8, 2002)

²'Under NIM section 2.2.2, GNAPs can *either* pick up half of the costs of the facilities on which long haul calls are transported on Ameritech Illinois' side of the POI that is outside the local exchange area in which the POI is located *or* pay Ameritech Illinois the appropriate switched access rate for that transport." Ameritech Ex. 3 (Mindell Direct) at 13.

In support of its position, Ameritech also argues that “all pertinent legal precedents support the proposition that GNAPs should bear the incremental costs caused by its decision to interconnect at a single point per LATA.” Ameritech IB at 5. In support of its argument Ameritech states that “[t]he FCC has, however, ruled that it is *permissible* to require the CLEC to bear those costs, and that such a requirement is not inconsistent with the CLEC’s right to choose a single POI.” *Id.* The FCC indicated that the clear requirement of its rules requires only physical interconnection at a single POI and rejected the commentators’ objections because the FCC has reopened the issue of allocation of financial responsibilities for interconnection in its Intercarrier Compensation NPRM.³

Additionally, for further support of its argument, Ameritech asserts that “the FCC has also made clear that a CLEC that wishes an expensive interconnection must bear the cost of that interconnection, and a single POI is an expensive interconnection.” Ameritech IB at 5 and 6 *citing* 1996 Local Competition Order ¶199. Ameritech, again, misrepresents the FCC’s ruling. The FCC has not defined a single POI as an “expensive interconnection”; rather, it is Ameritech that made the unilateral determination that a single POI is an expensive interconnection.⁴ Moreover, for some carriers, a multiple POI interconnection agreement may be “an expensive interconnection.” For example, GNAPs could argue that if it was forced to put a switch

³ See FCC, Notice of Proposed Rulemaking, In the Matter of developing a Unified Inter-Carrier Compensation Regime, CC Docket No. 01-92, adopted April 19, 2001, released April 27, 2000, ¶¶112-114. (“Inter-Carrier Compensation Regime”)

⁴ “These long distance (intraLATA toll) calls are expensive because they require the use of more facilities. If GNAPs elects a single POI, it causes calls that otherwise would be transported within a single local calling area to be transported an additional distance across several local calling areas. Thus, the form of interconnection elected by GNAPs is “expensive”...Ameritech Ex. 3 (Mindell Direct) at 17.

in every exchange a requirement that would dramatically increase facility deployment--that interconnection would be expensive. Ameritech's argument is myopic.

In addition, Ameritech's reliance on Verizon's Pennsylvania 271 proceeding is misplaced. See Ameritech IB at 7-8. Ameritech interprets the FCC's order to indicate that if this Commission were to resolve Issue 2 in Ameritech's favor that it would be consistent with the 1996 Act and the FCC's implementing regulations. Id. at 8. Ameritech also goes so far to state that the FCC's Verizon 271 Order foreclosed GNAPs' argument that paying the additional costs that result from its choice of a single POI architecture would improperly burden or constrain that choice. Id. at 7 and 16. The FCC, however, specifically stated,

Because the issue is open in out Intercarrier Compensation NPRM, we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the Act.⁵

The FCC has made it very clear in its Notice of Proposed Rulemaking ("NPRM") that the interconnection requirements of Section 251 have not been determined.⁶

Paragraph 113: As previously mentioned, an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA. **Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network.** These rules also require that an ILEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier. Application of these rules has led to questions concerning which carrier should bear the cost of transport to the POI, and under what circumstances an interconnecting carrier should

⁵ FCC, Memorandum Opinion and Order, *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, VerizonGlobal Networks Inc., and Verizon Select Services Inc. for Authorization To Provide in-Region, InterLATA services in Pennsylvania*, CC Docket No. 01-0138, rel Sept. 19, 2001 at ¶ 100 (Verizon 271 Order)

⁶ See "Inter-Carrier Compensation Regime"

be able to recover from the other carrier the costs of transport from the POI to the switch serving its end user. In particular, carriers have raised the question whether a CLEC, establishing a single POI within a LATA, should pay the ILEC transport costs to compensate the ILEC for the greater transport burden it bears in carrying the traffic outside a particular local calling area to the distant single POI. Some ILECs will interconnect at any POI within a local calling area; however, if a CLEC wishes to interconnect outside the local calling area, some LECs take the position that the CLEC must bear all costs for transport outside the local calling area. CLECs hold the contrary view, that our rules simply require LECs to interconnect at any technically feasible point within a LATA, and that each carrier must bear its own transport costs on its side of the POI.

If a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there and thus bear its own transport costs up to the single POI when the single POI is located outside the local calling area? Alternatively, should a carrier be required either to interconnect in every local calling area, or to pay the ILEC transport and/or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area? Further, if we should determine that a carrier establishing a single POI outside a local calling area must bear some portion of the ILEC's transport costs, do our regulations permit the imposition of access charges for calls that originate and terminate within one local calling area but cross local calling area boundaries due to the placement of the POI?

Paragraph 114: Finally, we are concerned that the interplay of our single POI rules and reciprocal compensation rules may lead to the deployment of inefficient or duplicative networks. By requiring an ILEC to interconnect with a requesting carrier at any technical feasible point in a LATA of that carrier's choosing, are we compelling inefficient network design by forcing the LEC to provision extra transport? **Or, by requiring carriers to pay ILECs for transport outside a local calling area, are we forcing the competitive carrier into an inefficient replication of the ILEC network?** Assuming that the ILEC receives reciprocal compensation for transporting terminating traffic, how precisely does a distant POI unfairly burden the LEC? Is the efficiency concern limited to those instances in which traffic between two networks is unbalanced and/or where transport is required beyond a certain distance? We seek comment on these questions, and any other issues related to the interplay between our single POI rules and our reciprocal compensation rules.(emphasis added)

Id.

Ameritech argues that section 251(c)(2)(D) of the 1996 act requires the Commission to rule that GNAPs bear the costs caused by GNAPs' decision to

interconnect at a single point per LATA. Ameritech IB at 9. Staff acknowledges that interconnection imposes costs on both carriers. See Staff Ex. 1 at 5-8. Yet, under Ameritech's proposal, GNAPs is forced to bear not only its share of the costs but also Ameritech's share of costs.

Furthermore, Ameritech's proposal uses elaborate diagrams to demonstrate how even GNAPs will incur greater transport costs if it deploys only one switch in the LATA. See Ameritech IB at 10-12 and Ameritech Ex. 4 (Mindell Rebuttal) at 4-5. Ameritech concludes that if GNAPs deploys two switches GNAPs will decrease its transport costs. Ameritech's witness Mr. Mindell states, "[t]here is nothing relative in the assertion that a long loop is more expensive than a short one." Ameritech Ex. 4 at 4. Yet, Ameritech's reasoning is flawed. Ameritech disregards the fact that, although GNAPs may decrease its transport costs, by deploying two switches per LATA it will dramatically increase its overall costs.

Furthermore, Ameritech has offered no evidence to prove that its proposal produces the lowest "overall" cost to both parties. Ameritech IB at 12. Rather, Ameritech's proposal only guarantees the lowest overall cost for itself. Additionally, Ameritech contends that the "magnitude of the transport costs that are the subject of issue 2 is irrelevant." Ameritech IB at 15. Ameritech states that the "Commission must assume, for purposes of this proceeding, that Ameritech Illinois' Commission-approved transport rates are proper. Id. at 16. Ameritech makes such statements throughout its brief regarding the transport costs, however, it offers no evidence or cost studies to support its assertions.

Ameritech's proposal is unclear with the respect to the rates to be used in NIM section 2.2.2.⁷ For example, if GNAPs were to choose Ameritech's option to pick up half the cost of the facilities on which the long haul calls are transported on Ameritech's side of the POI, Ameritech's proposal has failed to specify the basis on which it will figure "half the cost." Specifically, if Ameritech uses its special access rates, those rates are not cost based. Whereas, if Ameritech uses UNE transport rates to determine GNAPs' costs then the rates are cost based. The language in the interconnection agreement does not indicate if Ameritech intends to use special access rates or UNE transport rates. Subsequently, it is unclear what GNAPs will have to pay if the Commission were to adopt Ameritech's proposal.

Staff's proposal that each party should be responsible both financially and physically on its side of the single POI is consistent with the equity and efficiency goals of this Commission.

Issue No. 3: Should Ameritech's Local Calling Area Boundaries Be Imposed on GNAPs, or May GNAPs Broadly Define Its Own Local Calling Area?

In its Initial Brief, Staff recommended that GNAPs and Ameritech use Ameritech's existing local calling areas for purposes of intercarrier compensation. Staff Br. at 11. Staff explained that its recommendation was based on the fact that the Commission has already approved of Ameritech's local calling areas and that allowing nonuniform local calling areas for purposes of intercarrier compensation would result in a chaotic, asymmetrical intercarrier compensation regime. Id. 11-12. As Staff pointed

⁷ See Supra Footnote 2.

out, an asymmetrical intercarrier compensation scheme appears unreasonable in the absence of a cost-based justification. Id. at 12.

GNAPs acknowledges that nonuniform local calling areas would result in an asymmetrical intercarrier compensation regime. GNAPs Br. at 23. GNAPs, however, argues in favor of a LATA-wide local calling area for intercarrier compensation. Id. The Commission has approved of Ameritech's existing local calling areas. It has not approved of LATA-wide local calling areas in Illinois. Adopting GNAPs' position would likely require fundamental and far-reaching regulatory changes to Ameritech's existing services, including a comprehensive review of Ameritech's Alternative Regulation Plan and its access and toll revenues. Such a review cannot and should not be done in this arbitration proceeding.

Nevertheless, GNAPs has presented powerful arguments for reconsidering Ameritech's local calling areas for purposes of intercarrier compensation. GNAPs' position implicates a host of complex and broad policy issues that have important consequences for all telecommunications carriers and consumers. If, the Commission is inclined to reevaluate Ameritech's existing local calling areas, Staff recommends the Commission do so outside of this arbitration and in a proceeding where all carriers and interested parties can participate.

Issue No. 4: Can GNAPs Assign to Its Customers NXX Codes that Are "Homed" in a Central Office Switch Outside of the Local Calling Area in Which the Customer Resides?

The parties agree that GNAPs may assign its customers NXX codes associated with a particular rate center and provide foreign exchange (FX) or FX-like services. Staff Br. at 13-14; Ameritech Br. at 24. Staff, however, emphasizes its opposition to

GNAPs' proposal to use LATA-wide NXX codes. In Issue 3, Staff recommended that Ameritech's existing, Commission-approved local calling areas should govern intercarrier compensation until the Commission, after a comprehensive review, establishes different standards. Staff Br. 11-13, 15. Staff explained that it would be contrary to that recommendation to employ a uniform local calling area standard smaller than the LATA while simultaneously allowing carriers to use NXX codes for an entire LATA. Staff Br. at 15. LATA-wide NXX code assignment would prevent carriers from identifying the local calling area in which an NXX code is associated, and thus from distinguishing between local and interexchange traffic consistent with the Act and the Commission's regulations.

III. CONCLUSION:

For all of the foregoing reasons, we request the Administrative Law Judge accept Staff's recommendations in their entirety as set forth herein.

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Respectfully submitted,

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